

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 07-04

October 11, 2006

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Cases Involving Issues under *Oakwood Healthcare Inc.*, 348 NLRB No. 37, *Croft Metals*, 348 NLRB No. 38, and *Golden Crest Healthcare Center*, 348 NLRB No. 39

On September 29, 2006, the Board issued Decisions and Orders in *Oakwood Healthcare Inc.*, 348 NLRB No. 37, *Croft Metals*, 348 NLRB No. 38, and *Golden Crest Healthcare Center*, 348 NLRB No. 39, addressing supervisory issues in light of the Supreme Court's decision in *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). By separate Orders dated September 30, 2006, the Board remanded 46 representation cases back to the Regions for further processing consistent with the holdings in these decisions. Additionally, eight unfair labor practice cases were remanded by the Board to the Administrative Law Judges for further consideration.

The significance of the Board's holdings in *Oakwood Healthcare*, *Golden Crest Healthcare*, and *Croft Metals*, and the importance of the initial cases applying the new standard, require the Regions to give high priority to these cases, and to proceed with careful preparation of the record and full consideration of the evidence and arguments presented by the parties in each instance.

With respect to the remanded representation cases, the Regions should immediately contact the petitioner to determine whether that party wishes to proceed. If the petitioner requests withdrawal of the petition, the Region should approve the request and close the case. In the event the petitioner wishes to proceed, all parties should be contacted to determine their views on whether the record is sufficient to proceed without a hearing. Given the significance of the Board's rulings, the Region should provide the parties with a reasonable amount of time to respond to this inquiry. If it is clear from the response that the parties believe a hearing is necessary, or if no response is forthcoming, the Region should consider issuing an Order to Show Cause soliciting the parties' written positions on the current status of the disputed job classifications, and the need to reopen the record for the purposes of receiving additional evidence. A model of such an Order is attached.

If, in the Director's judgment, there is a need to reopen the hearing to ensure a complete record to decide the issues on remand, a notice of hearing should issue. If the hearing is reopened, the parties must be afforded the opportunity to present

evidence regarding the claim that the disputed individuals “assign” or “responsibly direct” employees using “independent judgment” within the meaning of Section 2(11), as well as other relevant evidence. In addition, if one of the parties raises “changed circumstances” and is able to substantiate through, for instance, an offer of proof that such circumstances would warrant consideration of other current supervisory *indicia*, those issues must be explored in the hearing as well.

In the event the hearing is not reopened, parties should be served with a request for briefs addressing these issues. If any Region receiving a remand needs assistance in processing these cases expeditiously, please contact your Assistant General Counsel or Deputy.

We anticipate that the Regions will receive a number of UC petitions raising issues under the Board’s recent holdings. These petitions should be processed with similar priority and in a timely fashion.

As to the unfair labor practice cases remanded by the Board, the Region should consult the Division of Advice regarding its proposed response to the Administrative Law Judge. In addition, it should consult with Advice with respect to any newly filed or pending charges involving claims that a person “assigns” or “responsibly directs” employees using “independent judgment,” within the meaning of Section 2(11).

For all remanded cases, as well as any newly filed or pending unfair labor practice or representation cases that raise supervisory issues as discussed in *Oakwood Healthcare*, *Golden Crest Healthcare*, or *Croft Metals*, the Region should make an entry into the “Notes” section of the CATS case card identifying it as raising “Oakwood Healthcare” issues. Please forward copies by FAX transmission or in PDF format of all new charges and petitions raising these issues to DAGC Terry Morgan. Recommending and decisional documents in the cases should be transmitted to DAGC Morgan via E-mail.

Any questions regarding this memorandum should be addressed to DAGC Morgan or the undersigned.

/s/
R. A. S.

Attachment
cc: NLRBU
Release to Public

MEMORANDUM OM 07-04

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
____ REGION

EMPLOYER

and

LABOR ORGANIZATION

Case

MODEL ORDER TO SHOW CAUSE

On (date), I issued a Decision and Direction of Election in this matter, in which I found that, *inter alia*, the (set forth disputed job classifications) employed by the (Full Name of Employer) (Employer) were not (were not) supervisors within the meaning of Section 2(11) of the Act. The National Labor Relations Board (the Board) granted the Employer's Request for Review of this Decision and Direction of Election on (date).

This case, which was remanded by the Board for further appropriate action consistent with the Board's holdings in *Oakwood Healthcare Inc.*, 348 NLRB No. 37, *Croft Metals*, 348 NLRB No. 38, and *Golden Crest Healthcare Center*, 348 NLRB No. 39, presents the question of whether (set forth disputed job classifications) employed by Employer, are statutory supervisors.

In light of the above-noted cases the Employer and Union are hereby **Ordered to Show Cause**, if any exists, why the record in this matter should be reopened for the purpose of receiving additional evidence regarding the authority of (disputed job classifications) to assign, responsibly direct and exercise independent judgment within the meaning of Section 2(11) including potential changed circumstances bearing on their status. The Parties must submit to me, by no later than 5:00 p.m., DATE, a written statement in response to this Order to Show Cause.

Regional Director
National Labor Relations Board
Region
Address

Dated at City, State
this ____ day of October 2006.